

**APPLICANT:**  
**NVR, Inc.**

**REQUEST:**  
**Variance to permit a single family detached dwelling to contain more than 3 stories**

**HEARING DATE: January 14, 2004**

**BEFORE THE**  
**ZONING HEARING EXAMINER**  
**FOR HARFORD COUNTY**  
**BOARD OF APPEALS**  
**Case No. 5389**

### **ZONING HEARING EXAMINER'S DECISION**

**APPLICANT:** NVR, Inc.

**LOCATION:** 123 Bower Lane - Colvard Manor subdivision, Forest Hill  
Tax Map: 33 / Grid: 3E / Parcel: 438 / Lot: 6  
Third Election District

**ZONING:** RR / Rural Residential

**REQUEST:** Variance pursuant to Section 267-35B, Table III, of the Harford County Code to permit a single family detached dwelling to contain more than 3 stories (4 stories proposed) in a RR District.

#### **TESTIMONY AND EVIDENCE OF RECORD:**

For the Applicant testified Bradley A. Hartsoe who identified himself as the owner of the subject parcel, having purchased it on December 22, 2003.

Mr. Hartsoe testified that he was self-employed, in the real estate business. He and his wife have five children. When they purchased their home, being a "Potomac" model, from NVR, Inc., Mr. and Mrs. Hartsoe believed that the house would have sufficient bedrooms for themselves and their children. They subsequently realized that in order to construct the number of bedrooms they had originally planned, a variance would be necessary. They did not know that the Harford County Code allows only three floors of finished living space. They accordingly now seek to create a fourth floor of living space by finishing off the top most floor.

Mr. Hartsoe introduced photographs of his property, as well as of the adjoining property. Those photographs show the subject property as being an attractive, large, colonial style home. The adjoining property has dormers in the roof. Mr. Hartsoe's house does not. The fourth floor which Mr. Hartsoe would like to use for living space would be comparable to a floor considered to be an "attic" in many homes, and appears to be the same floor which, in the adjacent dwelling shown on Attachment 8, has a dormer window affixed. In the Hartsoe property that floor is apparently accessed, on the exterior, only by windows on the upper side of the house, also shown on Attachment 8.

## **Case No. 5389 – NVR, Inc.**

Mr. Hartsoe testified that it would be impossible to tell, by simply looking at the house, that the house would have four finished floors within it.

When questioned about the practical difficulty he would suffer if the variance were not granted, Mr. Hartsoe stated that without the variance he could not convert the attic into a bedroom.

Mr. Hartsoe testified he and his family are presently living in the house, and that it contains about 3400 square feet of living space.

Next testified Anthony McClune for the Harford County Department of Planning and Zoning. Mr. McClune, echoing the recommendations of the Department, stated that the house is similar to others in its neighborhood. The variance, if granted, would have no adverse impact on the area. The Department accordingly recommends approval.

Mr. McClune did not believe the Fire Department would have concerns about the variance if granted. To meet Building Code, the fourth floor would be required to have appropriate ingress and egress. Mr. McClune pointed out that the variance is not to increase the height of the house. The variance is for a finished fourth floor which is not otherwise allowed in the Harford County Zoning Code.

The report of the Harford County Department of Planning and Zoning recommends approval, based upon its following observations:

"The dwellings in Colvard Manor are large custom built homes. Some of the homes have dormers in the front upper level that give the appearance of a third floor above ground. There would be no outward sign that part of the attic will be used for living area in the subject dwelling. If approved, the request will have no impact on the adjacent properties."

There was no testimony in opposition.

### **APPLICABLE LAW:**

The Applicants are requesting a variance to § 267-35B, Table III, of the Harford County Code, which states:

"B. General regulations. Minimum lot area, maximum lot area, maximum average lot area, area per dwelling or family unit, building setback from adjacent residential lot lines, lot width, front, side and rear yard and maximum building height, as displayed in Table III, shall apply, subject to other requirements of this Part 1."

## **Case No. 5389 – NVR, Inc.**

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

*“Variances.*

- A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:*
  - (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*
  - (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*
- B. In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*
- C. If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

The Applicants purchased the subject property apparently believing that the attic could be converted into bedrooms, making it finished living space. The home, at the time they purchased it, had three full floors of living space consisting of approximately 3400 square feet of space.

The Hartsoe’s would like to improve the top most, unfinished floor, in order to give them additional bedrooms for their family. The house is an attractive, large house in a subdivision of similar homes. Testimony was that the conversion of the attic into a fourth floor would not be noticeable to neighbors or passers-by. That testimony is accepted as a fact.

## **Case No. 5389 – NVR, Inc.**

It is also found as a statement of fact that the house is usable without the variance and it is, in fact, an attractive home in an attractive neighborhood of large homes.

Unfortunately, variances cannot be granted based merely upon the good intentions of the Applicant, or at the discretion of the Board of Appeals. There is a standard which is to be applied. The standard is well known, recognized, and embodied at Section 267-11 of the Harford County Code.

As had been explained by years of court opinions, an applicant, to be granted a variance, must initially meet a two part test. First of all, the Applicant must show that the property or its topographical conditions are unique. The second step is to show, as a result, that the enforcement of the Code would result in practical difficulty or unreasonable hardship. There is a further overlay which must also be examined. If the first two conditions can be met, then it must be shown that the granting of the variance would not be detrimental to adjacent properties or would not materially impair the purpose of the Code, or the public interest.

The Applicant clearly did not make a showing of uniqueness. There is no testimony or evidence of any nature of a uniqueness of the property so as to justify a variance. The Applicants would like to put a fourth floor in the property for their children. This is certainly a well intentioned desire, but it is not a unique characteristic of the property.

‘Uniqueness’ is not a mysterious concept in zoning law. It has been well defined. Cromwell v. Arthur Thomas Ward, III, 102 Md. App. 691 (1995), discussed this concept in detail, and provides an easily understood frame work in which to analyze arguments of ‘uniqueness’:

"In the zoning context the ‘unique’ aspect of variance requirement does not refer to extent of improvements upon the property, or upon neighboring properties. “Uniqueness” of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface conditions, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls. . . "

The Applicants, unfortunately, are unable to identify, or even suggest, an inherent characteristic of the *subject property* not shared by the other properties in the area.

**Case No. 5389 – NVR, Inc.**

It is also true, although sometimes perhaps subject to some confusion, that one does not suffer hardship simply because one cannot do what one wants to do. The hardship or practical difficulty that is suffered by an applicant must be related in an articulated way to the uniqueness of his or her property. The Applicants were not able to make such a linkage. Even if the Applicant could identify a unique characteristic, the resulting hardship must be as a result of this uniqueness. Generally this results in an unfair application of the Code upon ones' property. This is not, however, the Applicants' situation as the Harford County Code prohibition against a fourth floor is equally applicable to all other homes in the Applicant's subdivision and, in fact, applicable to all other homes in Harford County. The Applicant, accordingly, does not suffer any difficulty or restriction not suffered by every other homeowner in Harford County.

Furthermore, if granted, the requested variance could tend to impair the purposes of the Harford County Code. There is, at present, a legislatively mandated prohibition against single family residential homes having more than three floors of living space. The granting of variances to that requirement, without a statutorily based, articulated reason, would directly conflict with this clear statutory limitation.

**CONCLUSION:**

For the above reasons, it is recommended that the requested variance be denied.

Date      February 19, 2004

ROBERT F. KAHOE, JR.  
Zoning Hearing Examiner